

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017

1-4

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATE DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 CHAD MCFARLIN, individually</p> <p>6 and on behalf of all</p> <p>7 similarly situated persons,</p> <p>8</p> <p>9 Plaintiffs,</p> <p>10 vs. Civil Action No:</p> <p>2:16-cv-12536</p> <p>11 HON. GERSHWIN A. DRAIN</p> <p>12 THE WORD ENTERPRISES, LLC,</p> <p>13 et al,</p> <p>14</p> <p>15 Defendants.</p> <p>16 _____/</p> <p>17</p> <p>18</p> <p>19 The Deposition of MICHELE FOLLMAN was taken</p> <p>20 before me, Barbara Phillips, (CER #5598) and Notary</p> <p>21 Public, in and for the County of Washtenaw, State of</p> <p>22 Michigan, at 221 N. Main Street, Suite 300, Ann</p> <p>23 Arbor, Michigan, on Tuesday, December 5, 2017, at</p> <p>24 1:45 p.m.</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS: PAGE:</p> <p>3 M I C H E L E F O L L M A N</p> <p>4</p> <p>5 Examination by Mr. Blanchard 4</p> <p>6</p> <p>7</p> <p>8</p> <p>9 ** * * * * *</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 EXHIBITS: PAGE:</p> <p>13</p> <p>14 Deposition Exhibit No. 25 51</p> <p>15</p> <p>16</p> <p>17 ** * * * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 DAVID M. BLANCHARD (P67190)</p> <p>4 221 N. Main Street, Suite 300</p> <p>5 Ann Arbor, Michigan 48104</p> <p>6 734-929-4313</p> <p>7</p> <p>8 Appearing on behalf of the Plaintiffs.</p> <p>9</p> <p>10</p> <p>11 JEFFREY S. THEUER (P44161)</p> <p>12 124 West Allegan Street, Suite 700</p> <p>13 Lansing, Michigan 48933</p> <p>14 517-482-2400</p> <p>15</p> <p>16 Appearing on behalf of the Defendants.</p> <p>17</p> <p>18 ** * * * * *</p> <p>19</p> <p>20 REPORTED BY: Barbara Phillips,</p> <p>21 (CER #5598)</p> <p>22 and Notary Public.</p> <p>23</p> <p>24</p> <p>25 ALSO PRESENT: Kevin Dittrich</p>	<p style="text-align: right;">Page 4</p> <p>1 Ann Arbor, Michigan</p> <p>2 Tuesday, December 5, 2017</p> <p>3 1:45 p.m.</p> <p>4</p> <p>5 ** * * * * *</p> <p>6</p> <p>7 M I C H E L E F O L L M A N</p> <p>8 after having been first duly sworn to tell the</p> <p>9 truth, the whole truth, and nothing but the</p> <p>10 truth, was examined and testified upon her</p> <p>11 oath as follows:</p> <p>12</p> <p>13 ** * * * * *</p> <p>14 E X A M I N A T I O N</p> <p>15 BY MR. BLANCHARD:</p> <p>16 Q. Thank you, Ms. Follman. You've been here the whole</p> <p>17 time during part one and part two of Mr. Dittrich's</p> <p>18 testimony; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And he has been speaking on behalf of the companies,</p> <p>21 defendant companies pursuant to what we marked</p> <p>22 previously. We've got these exhibits in front of</p> <p>23 you. The re-notice of the deposition is Exhibit 16</p> <p>24 which I'm showing you right now. It's in front of</p> <p>25 you. And you've been designated as somebody who can</p>

MICHELE FOLLMAN
MCFARLIN vs WORD ENTERPRISES

December 05, 2017

5-8

<p style="text-align: right;">Page 5</p> <p>1 answer some of the additional questions and you've</p> <p>2 heard what those questions are and stuff, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you've heard the testimony of Mr. Dittrich. Was</p> <p>5 there anything as to the topics that we're noticing</p> <p>6 in this deposition that I asked about, anything in</p> <p>7 particular that stands out that needs to be</p> <p>8 corrected or was incorrect in any way?</p> <p>9 A. No.</p> <p>10 Q. I'd like you to turn to Exhibit 17 which is the next</p> <p>11 one here and that's your affidavit. I'm going to</p> <p>12 ask you about that one. Who, if anyone, helped you</p> <p>13 prepare this document?</p> <p>14 A. Counsel.</p> <p>15 Q. Anyone other than counsel?</p> <p>16 A. No.</p> <p>17 Q. And what was your understanding of the purpose of</p> <p>18 this document?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Like, for instance, were you under the understanding</p> <p>21 that this was for the purpose of informing the</p> <p>22 expert or the accountant on certain business</p> <p>23 practices?</p> <p>24 A. I'm not sure.</p> <p>25 Q. Do you know what the purpose of it was really?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. We use the tip credit to get them to minimum wage</p> <p>2 with their compensation for their vehicle costs. So</p> <p>3 not just the minimum wage, but with their costs</p> <p>4 included.</p> <p>5 Q. What components of the money that's given to the</p> <p>6 drivers is intended to be a reimbursement for their</p> <p>7 mileage?</p> <p>8 A. It's the whole -- the package. Their wages, their</p> <p>9 compensation per delivery and their tips.</p> <p>10 Q. So are you saying that there is no specific portion</p> <p>11 of a driver's money that they receive that's</p> <p>12 intended to be reimbursement for driving expenses?</p> <p>13 A. Can you ask that again one more time?</p> <p>14 Q. Yeah. I want to get a clear answer and I want to be</p> <p>15 clear about what the question is, too, so I'm not</p> <p>16 doing the best job. Is there any particular piece</p> <p>17 of the money that changes hands between the</p> <p>18 defendant companies and the driver that's intended</p> <p>19 and designated as reimbursement for the expense</p> <p>20 incurred by the drivers?</p> <p>21 A. That is only designated for that expense?</p> <p>22 Q. That is designated at all or in part as</p> <p>23 reimbursement for the expense incurred by the</p> <p>24 drivers.</p> <p>25 A. I would say yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 A. I don't know. I answered the questions my lawyer</p> <p>2 asked me.</p> <p>3 Q. In paragraph eight of your affidavit declaration</p> <p>4 here -- are you familiar with it by the way? Do you</p> <p>5 need to take time to read it or review it?</p> <p>6 A. I'm familiar.</p> <p>7 Q. In paragraph eight you testify the driver employees</p> <p>8 at the two operating companies -- this was before</p> <p>9 Durand was added, were not paid on the basis of</p> <p>10 minimum wage plus vehicle reimbursement. Why did</p> <p>11 you say that?</p> <p>12 A. We did not pay a minimum wage plus reimbursement</p> <p>13 there. We used the tip credit to get them to</p> <p>14 minimum wage with their compensation for the vehicle</p> <p>15 costs.</p> <p>16 Q. So all you're saying in that particular sentence,</p> <p>17 the first sentence of paragraph eight, is that you</p> <p>18 were using the tip credit and paying a cash wage</p> <p>19 that was below the minimum wage rather than on the</p> <p>20 basis of minimum wage and vehicle reimbursement?</p> <p>21 MR. THEUER: I'll object to the</p> <p>22 characterization, but go ahead and answer.</p> <p>23 BY MR. BLANCHARD:</p> <p>24 Q. I'm just trying to understand what you're trying to</p> <p>25 say there?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Can you tell me what that is?</p> <p>2 A. If I'm understanding you correctly then part of</p> <p>3 their pay package with the tips. The hourly pay and</p> <p>4 compensation goes to reimbursing them their vehicle</p> <p>5 costs.</p> <p>6 Q. Which part of that?</p> <p>7 A. It's a package deal so I mean there's nothing</p> <p>8 specifically designated just to that.</p> <p>9 Q. So we talked in your prior testimony about a</p> <p>10 delivery fee that's paid to drivers?</p> <p>11 A. Yes.</p> <p>12 Q. And that was 75 cents per delivery?</p> <p>13 A. Yes.</p> <p>14 Q. Plus, at the Laingsburg location it was something</p> <p>15 different. It was \$1.75 and now I guess it's 2.75,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And now is the base delivery fee that's paid still</p> <p>19 75 cents or is it a dollar?</p> <p>20 A. 75 cents still.</p> <p>21 Q. And that's for all the defendant stores?</p> <p>22 A. Yes.</p> <p>23 Q. And we had a question about the cash wage that's</p> <p>24 paid to drivers at all defendant stores. Is it</p> <p>25 still \$5 for all the drivers?</p>

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017
17-20

<p style="text-align: right;">Page 17</p> <p>1 THE CLERK: Okay. So you're in the middle of a</p> <p>2 30(b)(6) deposition and you have an issue about a</p> <p>3 particular line of questioning you say and you want</p> <p>4 the judge to decide the issue now?</p> <p>5 MR. BLANCHARD: Yeah.</p> <p>6 THE CLERK: Is that what you're asking?</p> <p>7 MR. BLANCHARD: Yes, if it's his practice to</p> <p>8 hear discovery disputes of this sort. I mean the</p> <p>9 other alternative is we'd have to adjourn the</p> <p>10 deposition which the defendants have told us they</p> <p>11 would object to that as well.</p> <p>12 THE CLERK: In this case has the discovery --</p> <p>13 and what specifically, I guess, is the question?</p> <p>14 MR. BLANCHARD: Whether the deponent should be</p> <p>15 directed to answer the question or another person</p> <p>16 that can answer the question can be designated?</p> <p>17 THE CLERK: Hold on one second.</p> <p>18 (Break in proceedings at 2:07 p.m.)</p> <p>19 (Back on the record at 2:09 p.m.)</p> <p>20 THE CLERK: Hello. The judge is unavailable at</p> <p>21 the moment. I don't know if there's a magistrate</p> <p>22 judge you want to call, I guess, about the discovery</p> <p>23 issues that have been referred to or if you want to</p> <p>24 call back later on.</p> <p>25 MR. BLANCHARD: Okay. Do you know if it's the</p>	<p style="text-align: right;">Page 19</p> <p>1 considered to be taxable compensation to the driver.</p> <p>2 A. No.</p> <p>3 Q. In your affidavit you refer at one time to a mistake</p> <p>4 that was made where credit card tips were paid out</p> <p>5 twice?</p> <p>6 A. Yes.</p> <p>7 Q. And for what period of time did that occur and in</p> <p>8 what locations?</p> <p>9 A. I don't remember the exact period of time. I</p> <p>10 believe --</p> <p>11 Q. Was it in April of 2016 was when the error was</p> <p>12 found?</p> <p>13 A. April of 2016 is when the error was found.</p> <p>14 Q. And did it go all the way back to November 2014?</p> <p>15 A. Not that far back. I believe it was about a year,</p> <p>16 but I'm not specific on the dates.</p> <p>17 Q. And was that an error that was occurring in the</p> <p>18 books at all locations or just the Perry location?</p> <p>19 A. Not all locations. I believe it was Perry and</p> <p>20 Haslett, but I'm not a hundred percent sure.</p> <p>21 Q. It was more than one store?</p> <p>22 A. It was more than one store.</p> <p>23 Q. Did that error occur at the Durand store?</p> <p>24 A. No, I don't believe so.</p> <p>25 Q. Did that error occur at the St. Johns store?</p>
<p style="text-align: right;">Page 18</p> <p>1 judge's preference to terminate the deposition and</p> <p>2 bring a motion on the issue?</p> <p>3 THE CLERK: No. I can't -- bringing a motion I</p> <p>4 think is the best practice and I think it's the</p> <p>5 ordinary practice.</p> <p>6 MR. BLANCHARD: Okay.</p> <p>7 THE CLERK: Yeah. It's uncommon for things to</p> <p>8 just be handled over the phone especially like not</p> <p>9 on the record. Yeah, that would be my suggestion.</p> <p>10 MR. BLANCHARD: Okay. Thank you.</p> <p>11 THE CLERK: All right. Thank you.</p> <p>12 MR. BLANCHARD: Off the record.</p> <p>13 (Break in proceedings at 2:10 p.m.)</p> <p>14 (Back on the record at 2:19 p.m.)</p> <p>15 MR. BLANCHARD: Let me ask a slightly different</p> <p>16 question. It looks like we're going to have to</p> <p>17 bring a motion to come back to the question that we</p> <p>18 were dealing with before.</p> <p>19 BY MR. BLANCHARD:</p> <p>20 Q. A slightly different question. Of the delivery fees</p> <p>21 that were paid to drivers at the end of the night in</p> <p>22 cash was there any portion of that that was taxable</p> <p>23 compensation to the driver?</p> <p>24 A. That the drivers pay taxes on?</p> <p>25 Q. Yeah. That the company that's paying this money</p>	<p style="text-align: right;">Page 20</p> <p>1 A. It might have. I'm not sure on that.</p> <p>2 Q. I want to turn your attention to Exhibit 20. It</p> <p>3 should have a tag on it. It's a spreadsheet I</p> <p>4 believe you prepared. You have that in front of you</p> <p>5 now?</p> <p>6 A. Yes.</p> <p>7 Q. Did you prepare this document?</p> <p>8 A. I prepared the data for the document, yes.</p> <p>9 Q. Who inputted the data?</p> <p>10 A. Counsel.</p> <p>11 Q. And what form did you prepare the data in?</p> <p>12 A. In an Excel sheet also.</p> <p>13 Q. So what are you suggesting, just like the titles and</p> <p>14 formatting were done by counsel or something else?</p> <p>15 A. Yeah.</p> <p>16 Q. Just the titles and formatting?</p> <p>17 A. Yes.</p> <p>18 Q. In the document that you prepared did it have</p> <p>19 formulas within the document like, you know, take</p> <p>20 this cell and times this one and then come up with</p> <p>21 another one?</p> <p>22 A. Yes.</p> <p>23 Q. And do you have a copy of this final document with</p> <p>24 the -- does it have formulas in it, this version as</p> <p>25 well if you know?</p>

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017
21-24

<p style="text-align: right;">Page 21</p> <p>1 A. This one here?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 MR. BLANCHARD: I think at some point we're</p> <p>5 gonna need -- just so we understand where the math</p> <p>6 is going in here, where the calculations are coming</p> <p>7 from, we're gonna need an electronic format of this.</p> <p>8 As far as I know I've only gotten this small PDF.</p> <p>9 Will you be able to provide that?</p> <p>10 MR. THEUER: I don't know with certainty, but</p> <p>11 we can explain anything.</p> <p>12 MR. BLANCHARD: Well, I am going to ask her</p> <p>13 what she knows, but I think the simplest way to get</p> <p>14 this kind of information is going to be in a</p> <p>15 spreadsheet that speaks for itself.</p> <p>16 BY MR. BLANCHARD:</p> <p>17 Q. So you prepared for each week the information that's</p> <p>18 found on this sheet, Exhibit 20?</p> <p>19 A. Yes.</p> <p>20 Q. And in the first three columns -- well, the first</p> <p>21 column it says date of pay and that's the actual pay</p> <p>22 date, right?</p> <p>23 A. Yes, the check.</p> <p>24 Q. And in the three columns after that you have the</p> <p>25 hours in store, hours out of store, and total number</p>	<p style="text-align: right;">Page 23</p> <p>1 A. The regular wages would be the in store hours and</p> <p>2 then the on the road hours.</p> <p>3 Q. The cash wage?</p> <p>4 A. The cash wage paid. The gross pay for those.</p> <p>5 Q. Okay. Go ahead.</p> <p>6 A. The credit card tips would be the reported credit</p> <p>7 card tips that the computer kept track of. And then</p> <p>8 the estimated cash tips is what we estimated based</p> <p>9 on our findings of cash tips to be, what they should</p> <p>10 have made for cash tips at that time period.</p> <p>11 Q. So these three columns you just explained here are</p> <p>12 in your formula considering the three parts of the</p> <p>13 driver's wages; is that right?</p> <p>14 A. Three parts, yes.</p> <p>15 Q. And part of the driver's wages you're saying you</p> <p>16 estimated?</p> <p>17 A. The cash tips were estimated. We did not have</p> <p>18 actual numbers for those, but we used a formula to</p> <p>19 figure it out.</p> <p>20 Q. Did you do tax withholding on the total of those</p> <p>21 three columns?</p> <p>22 A. On the regular wages and the credit card tips there</p> <p>23 was tax withholding.</p> <p>24 Q. And what is your basis for believing that the store</p> <p>25 is entitled to count the tips paid by a customer to</p>
<p style="text-align: right;">Page 22</p> <p>1 of hours, right?</p> <p>2 A. Yes.</p> <p>3 Q. And then the pay rate in store and road because</p> <p>4 there's a split wage system and it looks like it</p> <p>5 went to 8.50 at some point?</p> <p>6 A. Yes.</p> <p>7 Q. And then if I look at the column for January 14th of</p> <p>8 2016 or I should say the row for January 14th of '16</p> <p>9 and it says the rate is 8.50, and then I look over</p> <p>10 to the -- you inputted this column total minimum</p> <p>11 wage to be paid, right?</p> <p>12 A. Yes.</p> <p>13 Q. Would we expect that to be -- the full minimum wage</p> <p>14 at that point would be 8.50 times the total number</p> <p>15 of hours?</p> <p>16 A. Yes.</p> <p>17 Q. So that's the kind of thing. If I look at this</p> <p>18 column and the data behind it it would say take</p> <p>19 column three, total hours, multiply by column four,</p> <p>20 minimum wage, equals that column six?</p> <p>21 A. Yes.</p> <p>22 Q. And then tell me what the next three columns are.</p> <p>23 Regular wage paid, credit card tips, and I think the</p> <p>24 next one says estimated cash tip paid, and tell me</p> <p>25 where you got those numbers.</p>	<p style="text-align: right;">Page 24</p> <p>1 a driver as wages?</p> <p>2 A. Because they're a tipped employee and we use the tip</p> <p>3 credit.</p> <p>4 Q. And how does the tip credit work to your</p> <p>5 understanding?</p> <p>6 A. To my understanding we pay them -- well, we're</p> <p>7 paying them \$5 an hour and they make up the</p> <p>8 difference between that and the minimum wage</p> <p>9 inputting all the reimbursements to the minimum</p> <p>10 wage. To the 8.15, 8.50, 8.90, whatever the minimum</p> <p>11 wage is at that time.</p> <p>12 Q. The store gets to take a credit and treat as wages</p> <p>13 that portion that brings it up to the minimum wage?</p> <p>14 A. Yes.</p> <p>15 Q. And that portion of tips paid to the driver that's</p> <p>16 above the minimum wage, are you saying it's your</p> <p>17 understanding or your belief that the store gets to</p> <p>18 treat those as wages as well?</p> <p>19 MR. THEUER: I'll object to the extent that it</p> <p>20 calls for a legal conclusion, but you can answer if</p> <p>21 you can.</p> <p>22 THE WITNESS: I don't know the answer. I don't</p> <p>23 know.</p> <p>24 BY MR. BLANCHARD:</p> <p>25 Q. Let's look -- I'm going to come back to this Exhibit</p>

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017
25-28

<p style="text-align: right;">Page 25</p> <p>1 20. It's definitely going to be a touchstone we'll</p> <p>2 talk about today, but I wanted to direct you to</p> <p>3 Exhibit 18 which is the minimum wage notice for</p> <p>4 tipped employees. And Mr. Dittrich directed me to</p> <p>5 you to ask some of these questions about this</p> <p>6 notice. You already testified to it. We don't need</p> <p>7 to repeat it all, but this is a notice that was</p> <p>8 posted at each of the defendant stores, right?</p> <p>9 A. Yes.</p> <p>10 Q. And that was for a period of time that probably</p> <p>11 would have been around 2014 to the end of 2015?</p> <p>12 A. Yes.</p> <p>13 Q. And then in 2016 the minimum wage went up. Was</p> <p>14 there a new notice prepared in the same format as</p> <p>15 this one and then pasted at the stores?</p> <p>16 A. Yes.</p> <p>17 Q. And then it's going up -- has it gone up from 8.50?</p> <p>18 A. Yes.</p> <p>19 Q. What's the current minimum wage?</p> <p>20 A. 8.90.</p> <p>21 Q. And when it went up to 8.90 was it the same -- well,</p> <p>22 let me ask it, was there a similar notice posted</p> <p>23 that has the 8.90 number on it?</p> <p>24 A. I believe so.</p> <p>25 Q. Was it made off the same template? Was it like the</p>	<p style="text-align: right;">Page 27</p> <p>1 A. No.</p> <p>2 Q. Have you done any studies yourself of what a</p> <p>3 reasonable reimbursement is or what factors should</p> <p>4 be considered in a reasonable mileage reimbursement</p> <p>5 for employees?</p> <p>6 A. No.</p> <p>7 Q. So let's go back to Exhibit 20 again and then next</p> <p>8 we talked about the wages part. So when you're</p> <p>9 reporting on this spreadsheet the total wages paid</p> <p>10 you're counting the cash wage, plus the credit card,</p> <p>11 all tips. Not just the portion that's between the</p> <p>12 cash wage and 8.15 an hour, but all credit card tips</p> <p>13 reported, plus an estimated cash tip, right? You're</p> <p>14 counting all of those things as wages?</p> <p>15 A. Yes.</p> <p>16 Q. The next column is driver commission paid?</p> <p>17 A. Yes.</p> <p>18 Q. Well, let me ask this way, did you put the name</p> <p>19 driver commission paid in the title there?</p> <p>20 A. I don't remember.</p> <p>21 Q. Is that -- I'm sorry. Go ahead.</p> <p>22 A. I don't remember if that was my wording or theirs.</p> <p>23 Q. Do you usually call it driver commission, the</p> <p>24 delivery fee that we were talking about?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 exact same notice except just the number was</p> <p>2 changed?</p> <p>3 A. It's a part of our labor law poster.</p> <p>4 Q. Oh, that says what the minimum wage is?</p> <p>5 A. Yes.</p> <p>6 Q. But I'm asking in the format of Exhibit 18 --</p> <p>7 A. There is a portion on the labor law poster that has</p> <p>8 the tipped wage information on it. It's in pretty</p> <p>9 much the same format.</p> <p>10 Q. Was there a version of Exhibit 18 that was posted</p> <p>11 with the new rates that came out?</p> <p>12 A. Yeah. I believe so, yeah.</p> <p>13 Q. And it says here we apply the difference between</p> <p>14 your regular hourly rate and 8.15 as a quote, "tip</p> <p>15 credit" for each hour worked. That's the heart of</p> <p>16 the tip credit, right, where a portion of the tips</p> <p>17 get to be treated as wages?</p> <p>18 A. Yes.</p> <p>19 Q. And the amounts in this case when it was the 8.15</p> <p>20 minimum wage, the amounts over 8.15 are tips from</p> <p>21 the customer to the driver that belong to the</p> <p>22 driver, right?</p> <p>23 A. Yes.</p> <p>24 Q. Exhibit 23 is this reimbursement sheet. Have you</p> <p>25 seen that before?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And that is the delivery fee we were talking about</p> <p>2 that appears in that column, right?</p> <p>3 A. Yes.</p> <p>4 Q. And that was -- just so I have this right, for all</p> <p>5 of the numbers in that column on Exhibit 20, the</p> <p>6 so-called driver commission paid, that was never</p> <p>7 subject to a withholding tax reported on a paycheck</p> <p>8 or reported to the IRS at the end of the year,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Yes, that's correct?</p> <p>12 A. Yes, that's correct.</p> <p>13 Q. So the next column over you have total wages, tip</p> <p>14 and commission paid. So that's just an adding up of</p> <p>15 the previous four columns, right?</p> <p>16 A. Yes.</p> <p>17 Q. Treated as wages, the total amount of estimated tips</p> <p>18 the driver receives, plus the untaxed so-called</p> <p>19 driver commission, and total all that up together</p> <p>20 for the driver commission paid -- total wages, tip</p> <p>21 and commission paid?</p> <p>22 A. Yes.</p> <p>23 Q. And again, do you remember if you gave it that title</p> <p>24 or if somebody else gave it that title?</p> <p>25 A. I don't remember.</p>

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017
53-56

<p style="text-align: right;">Page 53</p> <p>1 right, in Exhibit 25?</p> <p>2 A. Of what the computer keeps track of, yes.</p> <p>3 Q. And then Exhibit 21, TWE000367, that's another</p> <p>4 payroll summary report?</p> <p>5 A. Yes.</p> <p>6 Q. And that's 3-1 through 5-31-2016. So that would</p> <p>7 overlap some of the same weeks as the payroll report</p> <p>8 that we looked at in Exhibit 25, right?</p> <p>9 A. Yes.</p> <p>10 Q. Is there a reason why the period in this Exhibit 21</p> <p>11 payroll summary report at the point we're looking</p> <p>12 at -- 3-1-2016 to 5-31-2016, is that part of a</p> <p>13 quarter in a fiscal year or is that just how it --</p> <p>14 A. That's just how someone produced them, yes.</p> <p>15 Q. They just chose a start date and end date and that's</p> <p>16 how it came out?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know -- how do I ask this? Exhibit 22, this</p> <p>19 is the employee check record. That's what comes</p> <p>20 from the accountant, right?</p> <p>21 A. Yes.</p> <p>22 Q. And on TWE669 --</p> <p>23 MR. THEUER: You're on Exhibit 25?</p> <p>24 MR. BLANCHARD: I'm on Exhibit 25.</p> <p>25 BY MR. BLANCHARD:</p>	<p style="text-align: right;">Page 55</p> <p>1 tell me which numbers on Exhibit 25 correspond to</p> <p>2 that gross pay number.</p> <p>3 A. I would have to look at a calendar because the check</p> <p>4 date would be the Thursday after the pay period</p> <p>5 ended and then it would go back.</p> <p>6 Q. The pay period ends on?</p> <p>7 A. On Sunday.</p> <p>8 Q. So four days after?</p> <p>9 A. So that would be the 10th. So it would have been</p> <p>10 week nine and week 10 on page 669.</p> <p>11 Q. So the 165.95 and the 213.85 numbers are a part of</p> <p>12 that gross pay?</p> <p>13 A. Yes.</p> <p>14 Q. And then also the credit card tips that were</p> <p>15 reported as 60.22 and 109.74 are also a part of that</p> <p>16 gross pay, right?</p> <p>17 A. Yes.</p> <p>18 Q. And then in Exhibit 25 there's a column for comp</p> <p>19 that we talked a lot about. It's the delivery fee</p> <p>20 money, right?</p> <p>21 A. Yes.</p> <p>22 Q. And remind me. I just read through the transcript</p> <p>23 for the prior depositions last night. That's kind of all</p> <p>24 the delivery fee money except Laingsburg does not</p> <p>25 show up on there?</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. If we could look at that against the first page of</p> <p>2 Exhibit 22. That's what I'm trying to understand</p> <p>3 here. So 22 has a gross pay column for July 14th</p> <p>4 and July 28th of 2016 and that gross pay column is</p> <p>5 recorded and -- this is the accountant's stuff, so</p> <p>6 reported and taxed. It's made up of -- some of the</p> <p>7 numbers we see on Exhibit 25, that's what I'm trying</p> <p>8 to walk you through.</p> <p>9 A. Yes.</p> <p>10 Q. So, for instance, at 7-14-16 we have a total of</p> <p>11 590.46. Do you see that gross pay on Exhibit 22 for</p> <p>12 July 14th? Do you see that?</p> <p>13 A. It's 549.48.</p> <p>14 Q. I'm seeing 590.46 gross pay on July 14th.</p> <p>15 A. I have 549.48. Which employee are you looking at?</p> <p>16 Q. Oh, you're on the second page. You're right. I'm</p> <p>17 looking on the wrong page because that's not Chad</p> <p>18 McFarlin. So we're looking at the second page of</p> <p>19 this. It's TWE0246. You're absolutely right. For</p> <p>20 July 14th we've got 549.48 you're saying --</p> <p>21 A. Yes.</p> <p>22 Q. -- is the number on Exhibit 22 for that payroll</p> <p>23 period, right?</p> <p>24 A. Yes.</p> <p>25 Q. That's the gross pay. And the gross pay -- can you</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct.</p> <p>2 Q. And the only way to get an accounting for the</p> <p>3 Laingsburg delivery fee is by looking at the</p> <p>4 actual delivery addresses?</p> <p>5 A. Yes.</p> <p>6 Q. So back to this. Exhibit 25, the comp for week nine</p> <p>7 and week 10, those numbers 31.50 and \$48 are not a</p> <p>8 part of this gross number --</p> <p>9 A. Correct.</p> <p>10 Q. -- that's recorded on Exhibit 22; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And those delivery fee numbers don't show up</p> <p>13 anywhere on this Exhibit 22; is that right?</p> <p>14 A. Right.</p> <p>15 Q. Well, let's see if it's the same thing. If we take</p> <p>16 Exhibit 20 now and look at your calculations, the</p> <p>17 curious question there that reminded me when I asked</p> <p>18 the other question, the delivery fees for</p> <p>19 Laingsburg, did you take those into account when you</p> <p>20 made this new spreadsheet thing?</p> <p>21 A. Yes.</p> <p>22 Q. And you did that again by looking at the actual</p> <p>23 addresses and trying to figure out well, if it's in</p> <p>24 Laingsburg we assume he got that extra pay for that,</p> <p>25 correct?</p>

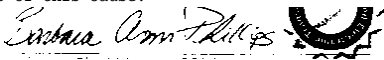
MICHELE FOLLMAN
MCFARLIN vs WORD ENTERPRISES

December 05, 2017
57-58

Page 57

1 A. Yes.
2 Q. So this is the pay period for July 14th. Driver
3 commission paid, we have \$85 here. It's not on
4 Exhibit 22. We've established that. And on Exhibit
5 25 for those two weeks you have \$48 plus 31.50 is
6 79.50 that shows up on Exhibit 25. And would I be
7 correct in assuming that the difference between
8 79.50 that shows up on there and the \$85 that you
9 have on your spreadsheet you created, Exhibit 20, is
10 because of the Laingsburg deliveries?
11 A. Yes.
12 Q. Cool. So we've talked about all these payment
13 components really on all these exhibits, but I'll
14 focus on Exhibit 20. All these different components
15 of compensation that you testified, is there any
16 particular one of them that the defendant can point
17 to as intended to reasonably compensate delivery
18 drivers for the expenses incurred in driving their
19 cars?
20 A. It is all a package deal.
21 MR. BLANCHARD: Thanks. I don't have anything
22 further. Do you want to follow-up?
23 MR. THEUER: No. I think I have nothing.
24 *****
25 (Deposition concluded at 3:36 p.m.)

Page 58

1 STATE OF MICHIGAN)
) ss.
2 COUNTY OF OAKLAND)
3 CERTIFICATE OF NOTARY PUBLIC
 AND COURT REPORTER
4
5 I, BARBARA PHILLIPS, Notary Public in
6 and for the County of Oakland, State of
7 Michigan, do hereby certify that the witness
8 whose attached deposition was taken before me
9 was first duly sworn to testify to the truth,
10 the whole truth and nothing but the truth;
11 that thereupon the foregoing questions were
12 asked and the foregoing answers were made by
13 the witness, which were duly recorded by me
14 electronically; and were reduced to
15 typewritten form by computer-aided
16 transcription under my direction; and that
17 this is, to the best of my knowledge and
18 belief, a true and correct transcript of my
19 electronic records so taken.
20 I further certify that I am neither of
21 counsel to either party, nor interested in the
22 events of this cause.
23 
24 Barbara Phillips, #5598
 Notary Public, Oakland County, MI
25 My Commission Expires: 11-27-2018